

MONTANA INJURED WORKERS RESOURCE COUNCIL

32 South Ewing, # 306, Helena, MT 59601

Email: info@montanaworkcomp.org

Website: www.montanaworkcomp.org

A Group

Of Injured Workers

By Injured Workers

For Injured Workers

Mr. Chairman, members of the committee, my name is Don Judge and I'm appearing here today on behalf of the Montana Injured Workers' Resource Council in opposition to Senate Bill 398.

Senate Bill 398 would establish the maximum Employer Payroll Tax for Unemployment Compensation and the maximum Employer Paid Premium Rate for Workers' Compensation for minimum-wage tipped employees based upon a wage no higher than two times the minimum wage in Montana. As of July 24, 2009, that figure will be \$14.50 per hour.

This artificially established rate would apply only to those employees whose employment may include the receipt of tips. Most commonly, such employees are working in food and beverage establishments, including bars, restaurants, taverns, casinos, hotels, motels and similar types of work. However, other types of workers also receive tips including clothing cleaners, house keepers, day care workers, outfitters & guides, rafting employees and others.

The effort of the sponsor is an attempt to recognize that under Montana Law, tips are the exclusive property of the employee receiving the tips and are not subject to state taxes as wages. (They are, however subject to federal income taxes.) On the other hand, both Workers' Compensation and Unemployment Insurance laws require that tips be included for the purposes of an employer's UI taxes and WC premium rates. Benefits for tipped workers who are either laid off or incur a work-related injury are also based upon their wages, including tips.

Issues surrounding this proposed change in the law include the following:

(1) By capping the UI tax and premium rates at no more than the worker's wage plus tips no greater than the minimum wage (in July the minimum wage will be \$7.25 per hour) you also cap the benefits a laid off or injured worker can receive. Both UI and WC have maximum wage loss benefits allowable, however, SB 398 would prohibit minimum-wage tipped employees from qualifying for the maximum benefits allowable even if their minimum wage plus tips would otherwise have qualified them.

For example: In Workers' Compensation an injured worker may be entitled to receive lost wages equal to 2/3 of their own wage not to exceed the state's average weekly wage for a job related injury. As such it would take a wage of approximately \$22.65 per hour to qualify for the maximum lost wage benefit of \$604.00 per week (the current average weekly wage). A tipped employee would have to earn \$15.40 per hour in tips in addition to the minimum wage of \$7.25 per hour (in July 2009) to qualify for maximum wage loss benefits. Several proponents of the bill said that in high-end restaurants it was not unusual for wait staff to earn \$20 to \$25 per hour in tips, putting their total income somewhere between \$27.25 and \$32.25 per hour (minimum wage plus tips). But, under the provisions of SB 398, instead of receiving \$604.00 per week for a job-related wage loss injury, these employees would be limited to no more than \$386.67 per week in lost wages based upon the maximum premium payment paid. **That's a loss of \$217.33 per week!**

In Unemployment Compensation a laid off worker may be entitled to receive lost wages equal to 1% of their qualifying base wage not to exceed a maximum of 67.5% of the state's average weekly wage (67.5% of \$604.00 = \$408). As such, it would take a wage of approximately \$19.50 per hour to qualify for the maximum wage lost benefit of \$408 per week (based upon a 40 hour work week). A tipped employee would have to earn

approximately \$12.25 per hour in tips in addition to the minimum wage of \$7.25 per hour (in July 2009) to qualify for maximum wage loss benefits. But under the provisions of SB 398, instead of receiving \$408 per week for a qualified job loss under UI, they would be limited to no more than \$301.60 per week based on the maximum UI taxes paid. **That's a loss of \$106.40 per week in UI benefits!**

(2) SB 398 treats this particular set of employees (minimum-wage tipped employees) different from all other employees covered under the UI and WC systems by artificially capping their wage loss benefit levels below those of all other employees covered under Workers' Compensation and Unemployment Compensation. We believe that this could raise the issues of equal protection under the Montana Constitution.

(3) SB 398 artificially sets premium rates for one class of workers under the UI and WC systems. This is what happened in the early 1980's that helped lead to the under-funding of Workers' Compensation, the separation of the old fund liabilities & claims from the newly-created State Fund. It also resulted in reductions in benefits, tightening up access to the system and higher premiums for employers. Is that a path we want to pursue again?

(4) Under Unemployment Insurance law a laid off worker must be seeking, available for and accept employment if offered in order to receive UI benefits. But, the law allows a laid off worker to reject employment at a job with wages substantially below the level of the job from which they were laid off. Under SB 398, those high-end tipped employees whose wages plus tips may have averaged \$25-\$30 per hour will now be in the position of taking a job paying \$14.50 per hour based upon the UI taxes established under the bill – or face becoming ineligible to receive their benefits. In addition, capping wages for these workers could also shorten the duration of their UI benefits (see fiscal note – Technical Notes).

(5) In Workers' Compensation, rates are supposed to be based upon wages plus factors including type of employment (hazards and severity of injuries) and experience (frequency of injuries). That's what makes the system solvent. If we open the door to artificially setting rates for this class of workers, which class of workers will be next?

It would make sense to refer this issue to the Labor Management Advisory Council on Workers' Compensation where these questions and others can be studied and answered before rushing to legislation.

**Prepared by Don Judge
Montana Injured Workers' Resource Council
(406) 459-1708**

Occupations and Industries Likely to Contain Tipped Employees

SOC CODE	OCCUPATION	2007 EMPLOYMENT ESTIMATE (1)	NAICS CODE	INDUSTRY	# OF UNITS (2)	AVG EMPLOYMENT (2)	2007 ANNUAL EMPLOYMENT (2)
35-3011	Bartenders	5,300	722410	Drinking Places	637	4,846	4,846
35-3031	Waiters & Waitresses	9,400	713290	Casinos	369	4,229	4,229
35-9031	Hosts & Hostesses	990	722110	Full Service Restaurants	959	17,949	17,949
35-9011	Dining Attendant (Busservice)	960					
37-2012	Maids & Housekeeping	5,150	721	Accommodation	700	10,993	10,993
39-6012	Concierges	30					
39-6011	Baggage Porters & Bellhops	50					
39-5011	Barbers	100	812111	Barber Shops	5	27	27
39-5012	Hairdresses & Hairstylists	770	812112	Beauty Salons	181	906	906
39-5092	Manicurists & Pedicurists	90	812113	Nail Salons	8	23	23
53-3041	Taxi & Chauffeurs	420	485310	Taxi Service	15	139	139
TOTALS		23,260			2,874	39,112	39,112

Source: Montana Department of Labor and Industry, Research and Analysis Bureau

(1) - Occupational Employment Statistics (OES); (2) - Quarterly Census of Employment and Wages (QCEW)

Note: For discussion purposes, occupations (identified by SOC Codes) have been lined up with industries (identified by NAICS Codes) where they are most commonly found. However, the occupations should not be assumed to be specifically limited to those identified industries. Additionally, the list of occupations and industries should not be assumed to be inclusive of all tipped employees employed in Montana.



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill # SB0398

Title: Revise work comp and unemployment law

Primary Sponsor: Zinke, Ryan

Status: As Introduced

- | | | |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: There is no fiscal impact to the State of Montana.

Technical Notes:

1. This legislation could result in a reduced weekly benefit amount and/or reduced claim duration should the employee file an unemployment insurance claim, because less wages would be reported to the unemployment insurance division than under current law.
2. The Internal Revenue Service (IRS) regulations state that all tips reported by the employee to the employer are wages.
3. Employers will have to maintain additional documentation to report the different wage amounts to the state and to the IRS.
4. Employers will pay full federal payroll tax (6.2%) on the tip amounts that are in excess of the amount that equals the minimum wage rate times the hours worked.
5. The tip amounts that are considered wages will be taxed at the federal payroll tax rate of 0.08% and qualify for the 5.4% reduction.

Sponsor's Initials

Date

Budget Director's Initials

Date